

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James and Lisa Crown	:	
	:	
v.	:	C-2022-3031132
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Decision dismisses the formal complaint filed by the Complainants against PECO Energy Company. The Complainants failed to satisfy their burden of demonstrating that PECO Energy Company violated the Public Utility Code, a Commission regulation or Commission order by attempting to install an above-ground transformer on their property.

HISTORY OF THE PROCEEDING

On March 1, 2022, James and Lisa Crown (“Mr. or Ms. Crown” or, individually and collectively “Complainants”) filed a Formal Complaint (“Complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against PECO Energy Company (“PECO” or “Respondent”) alleging that Respondent failed to provide reliable, safe, or quality utility service. Complainants averred that the proposed installation of an above-ground transformer on the property line near the front of their property infringes on their ability to install a walkway, which

is necessary to facilitate passage into and out of their home. Complainants requested that Respondent install the above-ground transformer at another location.¹

On March 18, 2022, Respondent filed a timely answer. In its answer, Respondent denied that there is a reliability or quality problem with the service provided to Complainants. Respondent averred that the transformer relocation is part of a mandated Long-Term Infrastructure Improvement Plan (LTIIIP). Respondent further averred that above-ground transformer to be installed on the Complainants' property is more durable than the existing submersible transformer, and its installation would enhance safety and improve service reliability. Respondent also stated that it had investigated placing the transformer in an alternate location near the back of the Complainants' home, as proposed by the Complainants but found the location unsuitable due to engineering issues. Lastly, Respondent indicated that it had inspected the Complainants' property and found no safety hazards which would require relocation of the above-ground transformer from the proposed installation site. Respondent requested that Complainants' Complaint be dismissed.

On March 23, 2022, the Commission served an Initial Telephonic Hearing Notice setting a formal call-in telephonic hearing for this matter for April 27, 2022, at 10:00 a.m. and assigning me as the presiding officer.

On April 21, 2022, PECO filed a Motion for Continuance of Hearing Date. The Motion was also served on the Complainants on that same date. The Motion requested a continuance of the April 27, 2022, hearing date because the Complainants wished to provide PECO with construction plans for a walkway to be installed at their home. By Order dated April 22, 2022, the Motion was granted. A Telephonic Hearing Cancellation / Reschedule Notice was issued the same day reflecting a rescheduled hearing date of June 28, 2022. In anticipation of that hearing, I served a Prehearing Order on May 2, 2022, setting forth hearing information and the rules that would govern the proceeding.

¹ The Complaint is an untimely appeal of a Bureau of Consumer Services' (BCS) decision in BCS Case #00818810 issued February 1, 2022.

On June 22, 2022, Ms. Crown, sent an email to my legal assistant requesting a continuance in this matter to allow her additional time to collect documentary evidence in support of the Complaint. PECO did not object to the request. On June 23, 2022, I issued a Second Continuance Order granting the request and a Telephonic Hearing Cancellation/Reschedule Notice was issued reflecting a rescheduled hearing date of August 2, 2022.

The hearing was held as scheduled on August 2, 2022, at 10:00 a.m. Ms. Crown appeared on behalf of Complainants. She submitted six exhibits that were entered into the record.² Khadijah Scott, Esquire attended on behalf of Respondent, along with four witnesses for Respondent. Respondent submitted six exhibits that were admitted into the record.

The record in this case closed on August 18, 2022, upon the filing of the 81-page hearing transcript with the Commission.

FINDINGS OF FACT

1. The Complainants in this case is James and Lisa Crown.
2. The Respondent in this case is PECO Energy Company
3. The Complainants' service address is 13066 Dorothy Drive, Philadelphia, PA 19124.
4. The lawn and driveway in front of the Complainants' home slope downward from the home's doorways to the sidewalk. Tr. 16 – 18, 36; Crown Exhibit 2.

² On August 3, 2022, the day after the hearing, Ms. Crown sent an email to my legal assistant indicating that she had “paperwork” given to her by PECO that she wished to have me review and consider when deciding this case. Ms. Crown did not provide a copy of the “paperwork” with her email, nor did she send a copy of the email to counsel for PECO. While not designated as such, Ms. Crown’s email is essentially a request to propose late exhibits to supplement the existing record in this matter. On August 5, 2022, I issued an Order instructing the Complainant to file a motion to submit late exhibits with the Secretary of the Commission no later than August 10, 2022 if Mr. or Ms. Crown wished to propose additional exhibits for inclusion in the record. No such motion was filed.

5. Ms. Crown's parents are elderly and live with the Complainants. Tr. 36.

6. Ms. Crown's father sometimes uses a wheelchair or walker; due to his age and unstable gait, he has difficulty moving to and from the home's doorways to the sidewalk. Tr. 36.

7. The Complainants wish to install a walkway from the home's doorway to the sidewalk to facilitate access for Ms. Crown's parents. Tr. 11 – 13, 36.

8. The Complainants received an estimate for construction of the walkway in October 2021; however, it has not yet been installed. Tr. 13, 34; Crown Exhibit 1.

9. PECO is retiring the submersible transformer that currently serves the Complainants' property and proposes to install an above-ground transformer in the Complainants' front yard on the property line between the Complainants' property and that of an adjacent property located at 13068 Dorothy Drive. Tr.52, 54; PECO Exhibits 3, 4.

10. The transformer relocation work proposed by PECO is being performed pursuant to a Long-Term Infrastructure Improvement Plan (LTIIIP) mandated by the Commission. Tr. 50 – 52; PECO Exhibit 1.

11. Complainants were informed of the transformer relocation work proposed by PECO pursuant to the LTIIIP in March 2021. Tr. 6; PECO Exhibit 2.

12. A Right of Way Agreement executed in 1973 by PECO and Kelvin Homes, the developer that constructed the Complainants' home, granted PECO easement rights permitting PECO to provide electric service to an 11-acre area, including the land on which the Complainants' home was built. Tr. 46 – 48; PECO Exhibits 5, 6.

13. PECO and Complainants engaged in discussions over a period of approximately six months concerning the installation of the above-ground transformer at an alternative installation site. Tr. 41, 58-59, 67-68, 72-74.

14. PECO informed the Complainants that it would consider installing the above-ground transformer at an alternative installation but would only do so if the Complainants secured permission for the installation from the owner of any alternative installation site. Tr. 59, 62.

15. The Complainants did not obtain permission for installation of the above-ground transformer at any alternative installation site. Tr. 59.

DISCUSSION

Legal Standard

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission’s regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Complainants alleged that Respondent violated section 1501 of Title 66 of the Public Utility Code regarding reasonable, safe, and quality service. 66 Pa.C.S. § 1501. Therefore, Complainants have the burden of proof in this proceeding.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will

prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains with the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also*, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

Moreover, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980). A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960). A complainant cannot establish a case merely by stating his or her personal beliefs, since assertions, personal opinions or perceptions do not constitute evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

Utility companies are required by law to provide adequate and reasonable service. Section 1501 of the Public Utility Code states:

§ 1501. Character of service and facilities.

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the Commission.

66 Pa.C.S. § 1501. This section does not require utility companies to provide perfect service. *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super. 1987).

Failure to Meet Burden

Ms. Crown testified that PECO's proposed installation of an above-ground transformer on the property line of her home would preclude the installation of a walkway in front of her home to accommodate the needs of her elderly parents. Tr. 11. In addition, she testified that the lawn area in front of her home and that of her adjacent neighbor is small and that she understood that "you have to have . . . three feet from the transformer to the walkway." Tr. 13. Ms. Crown further testified that "it's that small of a footprint that [constructing the walkway] wouldn't be possible." *Id.* Finally, she testified that she wanted to "work out a way to put [the transformer] somewhere else" and had suggested to PECO that the new transformer be moved to the property line in the backyards of 13066-13068 Dorothy Drive rather than in front of the properties. Tr. 13 – 14.

In support of her testimony that PECO had installed above-ground transformers in non-standard locations, Ms. Crown provided photographs of above-ground transformers installed by PECO in her neighborhood in "alternative" locations i.e., other than on the property line or adjacent to the sidewalk of homes served by the transformer. Tr. 33; Crown Exhibits 3, 4, 5, 6. Ms. Crown requested that PECO be ordered to find an alternative installation site for the above ground transformer. Tr. 36.

Respondent presented four witnesses. Mr. Santacrocce, PECO's Senior Real Estate Representative for the city of Philadelphia testified that in 1973, PECO obtained a right-of-way to provide electric service to an area that includes the Complainants' service address. Tr. 46 – 48; PECO Exhibits 5, 6. Mr. Santacrocce explained that based on the right of way granted in 1973, PECO has the right to place an above-ground pad-mount transformer at the Complainants' property. Tr. 48.

Mr. Brown, a PECO Project Engineer testified that the proposed transformer replacement installation was part of a LTIP designed to improve the performance of the electric system. Tr. 51. Mr. Brown testified that transformers are installed at locations selected in accordance with PECO design standards, which prioritize safety. Tr. 52 – 53. He also explained

that the design standards are intended to promote continuity, which facilitates “many kinds of preventative maintenance, equipment inspection or repairs, and allow [PECO] to streamline the process for our crews to deal with that equipment arranged in a similar way.” Tr. 52.

Mr. Brown testified that generally, when selecting a transformer location, “it would be right on the property line between the two houses and right in the front yard. . . . it maintains a safe distance from the house and a safe distance from any driveways or roadways.” Tr. 54; PECO Exhibit 4. He noted that the proposed relocation of the transformer to the backyard between the Complainants’ home and that of their neighbor “violates [PECO’s] design standard” in that it “introduces a variety of unknown factors or obstacles.” Tr. 53; PECO Exhibit 4. He further elaborated on the Complainants’ proposal to move the installation site to the backyard of 13066-13068 Dorothy Drive, stating: “we don’t know what’s [sic] . . . we’re digging into when we’re digging into the backyard. And in this case, if there is some kind of equipment failure . . . the time it would take to . . . re-dig up the yard in order to access that, it would be very difficult for the crews to do.” Tr. 53 – 54.

Mr. Brown acknowledged in his testimony that PECO had installed transformers in locations to avoid interference with *an existing* walkway but not *a proposed* walkway. Tr. 57. He also explained that in preliminary discussions with Ms. Crown concerning alternative transformer installation sites, PECO had indicated that “if she could get her neighbor to sign off on permission for [PECO] to put the transformer [in the neighbor’s yard] instead of [the Complainant’s] yard, then [PECO] would be willing to do that.” Tr. 59. Finally, he added that it was not PECO’s practice to solicit consent from neighbors in such cases and Ms. Crown had never provided her neighbor’s authorization to PECO with respect to the proposed transformer installation at her home. *Id.*

Mr. Garcia, a Senior Project Manager for Lafata Contract Services, a third-party contractor engaged by PECO to perform construction work for the LTIIIP project testified that he had participated in discussions with Mr. Brown and the Complainants regarding relocation of the above-ground transformer. Tr. 67 – 68. He corroborated Mr. Brown’s testimony concerning PECO’s willingness to explore alternative locations with the Complainants and his participation

in discussions with the Complainants over a period of months. *Id.* He also testified that PECO did not re-locate any transformers due to customer preference. Tr. 69.

Russell Jirik, another employee of Lafata Contract Services and the Customer Service Liaison for PECO for the city of Philadelphia also testified about his interaction with Mr. and Mrs. Crown regarding the pad-mount transformer placement, which began in December 2021. He acknowledged that after investigating the concerns raised by Mr. and Mrs. Crown, “we were not able to accommodate any of the Crowns’ suggestions.” Tr. 73 – 74. He also testified that he was involved in the conversation with Mr. and/or Ms. Crown regarding having a neighbor agree to have the transformer located on a neighbor’s property. *Id.* However, he testified the Mr. and/or Ms. Crown “never indicated they actually took up that conversation with their neighbors.” Tr. 74.

It is Complainants’ burden to establish that Respondent violated the Public Utility Code, the Commission’s regulations, or an outstanding order of the Commission. 66 Pa.C.S. §§ 332(a), 701. It is only after a complainant establishes a *prima facie* case that the burden shifts to the utility to rebut the evidence presented. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa. Cmwlth. 2001). Complainants did not establish a *prima facie* case.

Ms. Crown argued that it would be unreasonable for PECO to install an above-ground transformer on the property line in front of her home because it would interfere with installation of a walkway leading from her home to the sidewalk; however, she acknowledged that no such walkway currently exists at her home. Tr. 13. She also testified that she did not recall an offer by PECO to have an engineer come out and speak to Complainants’ contractor so they could show the contractor exactly where the transformer would be installed and how to design a walkway around the transformer. Tr. 38. However, she also testified that she “already talked to [the] contractor, and . . . already [knew] exactly where the transformer was going to go [and] it would be way too close to [the] walkway” Tr. 38.

Ms. Crown did not dispute that PECO has a right-of-way that allows it to install a transformer on her property. She did not refute the testimony of two PECO witnesses that she

and/or her husband had been advised that PECO would evaluate an alternative location if any property owner impacted by the change of location gave permission for PECO to install the transformer at the proposed alternative location. Furthermore, she provided no testimony or evidence that she or her husband had supplied any such approval to PECO. While PECO acknowledged that it had deviated from its standard transformer location practice to accommodate *existing* structures or installation obstacles, including walkways, the Complainants failed to demonstrate that PECO had done so for *proposed* structures or installation obstacles. Tr. 57.

Respondent provided credible testimony that Complainants were notified of the system improvement project and installation of pad-mount transformers in March 2021. Tr. 66 – 67. PECO witnesses also provided credible testimony that they discussed the transformer installation location, their willingness to work with Complainants’ contractor concerning walkway location and possible alternative installation sites over a period of months. Tr. 52, 55 – 56, 58 – 60, 67 – 68, 72 – 74.

Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence. *Mid-Atl. Power Supply Assoc. v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196 (Pa. Cmwlth. 2000); *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987). There is no objective evidence in the record upon which to find that Respondent failed to provide reasonable service to the Complainants by proposing to install an above-ground pad-mount transformer on the property line in front of their home, or that Respondent acted unreasonably when considering the request to re-locate the above-ground transformer.

There is no evidence in the record that proves that Respondent’s plan to install an above-ground pad-mount transformer on the property line in front of Complainants’ home was unreasonable. The evidence of record shows that Respondent’s actions in this case were reasonable and consistent with all applicable laws, regulations, and orders.

In the absence of evidence in the record that supports Complainants’ claims, I find that Complainants failed to meet the burden that Respondent violated any laws in connection

with the plan to install an above-ground pad-mount transformer on the property line in front of Complainants' home. Complainants also did not establish that Respondent is responsible for obtaining consent from a third party to relocate the proposed installation site for a transformer. There is no evidence in the record to prove that Respondent provided unreasonable service to Complainants. 66 Pa.C.S. § 1501. Accordingly, the Complainants' Complaint will be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter within its regulations and the parties to this proceeding. 66 Pa.C.S. § 701.
2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990).
4. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).
5. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.
6. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift

from one party to another, but the burden of proof never shifts; it always remains with the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also*, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "Substantial evidence" is the amount of evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

9. Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence. *Mid-Atl. Power Supply Assoc. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196 (Pa. Cmwlth. 2000); *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

10. Utility companies are required to provide reasonable service. 66 Pa.C.S. § 1501.

11. Respondent provided reasonable service consistent with Section 1501 of Title 66 of the Public Utility Code. 66 Pa.C.S. § 1501.

12. Complainants have failed to satisfy their burden of demonstrating that Respondent has violated the Public Utility Code, a Commission regulation or Commission order. 66 Pa.C.S. §§ 332(a), 701.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by James and Lisa Crown at James and Lisa Crown v. PECO Energy Company at docket number C-2022-3031132 is hereby denied.
2. That this matter is marked closed.

Date: October 19, 2022

_____/s/
Arlene Ashton
Administrative Law Judge